THE HONOURABLE Mr. JUSTICE B. SUDERSHAN REDDY

AND

THE HONOURABLE Mr. JUSTICE S. ANANDA REDDY

W.P. Nos.22290, 21607, 22241 and 21076 of 2003, 23551 of 2004, 855, 2393, 10715 and 21523 of 2005

DATE: 14-11-2005

W.P. No.22290 of 2003

Between:

K. Krishna Reddy, S/o. K. Narayana Reddy,
aged about 30 years, Assistant Lineman,
Employee of Sanjay Rural Electric Cooperative
Society Limited, Jogipet, Medak District
and 5 others .. Petitioners

AND

The Government of Andhra Pradesh
Rep. by its Principal Secretary,
Public Enterprises Department,
Secretariat Buildings, Hyderabad
and 4 others .. Respondents

W.P. No.21607 of 2003

Between:

M. Mallaiah, S/o. M. Bhagaiah,
aged about 33 years, Assistant Lineman
Employee of Sanjay Rural Electric Cooperative
Society Limited, Jogipet, Medak District
and 41 others

.. Petitioners

AND

The Government of Andhra Pradesh
Rep. by its Principal Secretary,
Public Enterprises Department,
Secretariat Buildings, Hyderabad
and 4 others

.. Respondents

W.P. No.22241 of 2003

Between:

V. Sanjeeva Reddy, S/o. V. Durga Reddy,
aged about 45 years, Assistant Lineman,
Employee of Sanjay Rural Electric Cooperative
Society Limited, Jogipet, Medak District
and 8 others

.. Petitioners

AND

The Government of Andhra Pradesh

Rep. by its Principal Secretary,

Public Enterprises Department,

Secretariat Buildings, Hyderabad

and 4 others

.. Respondents

W.P. No.21076 of 2003

Between:

Palwancha Narayana S/o. Pochaiah,

aged about 48 years,

Occ: Chairman, Agriculture Market Committee,

Jogipet, R/o. Masanipaly, Andole Mandal,

Medak District & 19 others

.. Petitioners

AND

The Government of Andhra Pradesh

Rep. by its Secretary,

Department of Co-operation,

Secretariat Buildings, Hyderabad-22

and 3 others

.. Respondents

W.P. No.23551 of 2004

Between:

B. Sureshwar Rao, S/o. Rama Rao,

age 33 years, Occ: Casual Labour,

R/o. Venkatapur village, Narayana Khed Mandal,

Medak District & 6 others

.. Petitioners

AND

The Government of Andhra Pradesh

Rep. by its Principal Secretary,

Public Enterprises Department,

Secretariat Buildings, Hyderabad

and 4 others

.. Respondents

W.P. No.855 of 2005

Between:

V. Anil Reddy, S/o. V. Narayana,

age 35 years, Occ: Casual Labour,

R/o. Jogipet village and Mandal,

Medak District & 5 others

.. Petitioners

AND

The Government of Andhra Pradesh

Rep. by its Principal Secretary,

Public Enterprises Department,

Secretariat Buildings, Hyderabad

and 4 others

.. Respondents

W.P. No.2393 of 2005

Between:

Samba Sudhakar, S/o. Rajaiah,

age 34 years, Occ: Casual Labour,

R/o. C/o. N. Prabhakar, Near Bhavani Temple,

Peddashenkarampet village and Mandal,

Medak District.

.. Petitioner

AND

The Government of Andhra Pradesh

Rep. by its Principal Secretary,

Public Enterprises Department,

Secretariat Buildings, Hyderabad

and 4 others

.. Respondents

W.P. No.10715 of 2005

Between:

M. Mallaiah, S/o. M. Bhagaiah,
aged about 33 years, Assistant Lineman
Employee of Sanjay Rural Electric Cooperative
Society Limited, Jogipet, Medak District
and 37 others

.. Petitioners

AND

The Government of Andhra Pradesh
Rep. by its Principal Secretary,
Public Enterprises Department,
Secretariat Buildings, Hyderabad
and 5 others

.. Respondents

W.P. No.21523 of 2005

Between:

K. Ramkrishna Reddy S/o. Venkat Konda Reddy,
aged about 64 years, R/o. Kusangi,
Tekmal Mandal, Medak District
and 8 others

.. Petitioners

AND

The Government of Andhra Pradesh

Rep. by its Principal Secretary,

Public Enterprises Department,

Secretariat Buildings, Hyderabad

and 5 others

.. Respondents

–

–

THE HON'BLE Mr. JUSTICE B. SUDERSHAN REDDY

And

THE HON'BLE Mr. JUSTICE S. ANANDA REDDY

W.P. Nos.22290, 21607, 22241 and 21076 of 2003, 23551 of 2004, 855, 2393, 10715 and 21523 of 2005

–

–

COMMON ORDER: (Per Hon'ble Mr. Justice B. Sudershan Reddy)

This batch of writ petitions is being disposed of by common order since the issues that arise for our consideration are interrelated.

The Sanjay Rural Electric Cooperative Society Limited, Jogipet, Medak District (for short 'Jogipet RESCO'), one of the respondents in all these writ petitions, is a Co-operative Society registered under Andhra Pradesh Co-operative Societies Act, 1964 (for short 'Societies Act') on 01-08-1981 with main objects of the society as specified in its bye-laws *viz*. (1) to make

available electric energy to the members and other consumers in its area, at as low a cost as practicable; and (2) to promote, through intensive rural electrification and coordination of its activities with other institutions and agencies, the economic development of its area.

The Jogipet RESCO was first licensed by the Government of Andhra Pradesh under the provisions of the Indian Electricity Act, 1910 to supply electricity to the public in July, 1982. Eversince grant of the said licence, the Jogipet RESCO utilizing the infrastructure and other facilities previously owned and operated by the Andhra Pradesh State Electricity Board (for short 'APSEB'), commenced its activity to procure electricity from APSEB (and later from Central Power Distribution Company of AP. Limited (for short 'CPDCL') for supply of electricity to the consumers in as many as 172 villages and 52 hamlets spreadover an area of
3,135 square kilometers in the Mandals of Andole, Pulkal, Shankarampet, Regode, Alladurg, Papannapet and Tekmol in Medak District. On account of its inability, inefficiency and mismanagement, not only it had landed in deep troubles but also plunged the whole area and its operation into darkness.

We shall notice few relevant details as to how it had conducted or rather mis-conducted its affairs and virtually brought disaster and landed the consumers in darkness.

The paid-up share capital of the Jogipet RESCO as on 31-03-2003 was Rs.257.73 lakhs, contributed as follows:

a. 58,109 individual members, cooperative societies and others hold

shares of the value of Rs.150.37 lakhs (58.34% of the share capital).

b. The State Government was holding shares of the value of Rs.39.50 lakhs (15.33% of the share capital).

c. CPDCL, a company incorporated under the Companies Act 1956, which in the year 2000 took over responsibility from APSEB/
A.P. Transco for power distribution in the seven central districts of A.P., including Medak District in which the activities of the
5th respondent-Jogipet RESCO are being undertaken, holds shares of the value of Rs.67.86 lakhs (26.33% of the share capital).

However, the amount contributed by the State Government to the Jogipet RESCO has been refunded to the Government by installments in terms of its bye-laws.

That after the advent of the electricity reforms and in pursuance of the A.P. Electricity Reform Act 1998, the A.P. Transco took over responsibility for transmission and distribution of power in the State from APSEB in 1999. It is a company, in which, the State Government holds 100% share capital and is the sole shareholder in CPDCL.

The Jogipet RESCO obtained loan of Rs.368.30 lakhs from Rural Electrification Corporation Limited to which the State Government stood as

guarantor and the outstanding amount of the loan with accrued interest was Rs.465.88 lakhs as on 31-12-2003.

The State Government having noticed the dismal performance of the Jogipet RESCO ordered to carryout option study in respect of its activities. The Registrar of the

Co-operative Societies, in purported exercise of the powers conferred under Section 51 of the Societies Act, ordered an enquiry into the constitution, working and financial condition of the Jogipet RESCO. That a detailed enquiry has been made by the Enquiry Officer and a report was submitted on 10-03-2003 to the Registrar which contains the graphic details as to how the Jogipet RESCO was subjected to mismanagement and destroyed itself, resulting in deteriorating financial conditions and adversely affecting its operational efficiency and performance in catering the needs of the consumers.

The Registrar after going through the report and available records found the actual distribution loss incurred by the Jogipet RESCO at very high range between 38% and 28%. The transformers failure rate is ranged between 32% and 48%. The collection of bills from consumers was very low ranging between 52% and 58% and outstanding receivables as on 30-09-2002 stood at Rs.1222.04 lakhs.

That the Jogipet RESCO had failed to make payments to CPDCL and other organizations to which it owed money.

The Registrar, having communicated the enquiry report and his findings thereon to the person-in-charge, required the Jogipet RESCO to make its representation as to why it should not be wound up in accordance with the

provisions of

Section 64(1) of the Societies Act. The Jogipet RESCO submitted its reply in response to the notice requesting the Registrar to drop the action and grant a period of two years to show better progress in its working. The Registrar, having considered the representation, so made, found that any delay in taking action for winding up the Jogipet RESCO would only add to further deterioration of its operational and financial performance. The Registrar accordingly exercised the powers conferred under the provisions of the Societies Act and directed vide proceedings, dated 01-07-2003, to wind up the Jogipet RESCO and accordingly appointed a Liquidator to wind up its affairs.

The winding up order in respect of the Jogipet RESCO includes, *inter alia,* the following actions to be taken by the Liquidator:

1. CPDCL has the option to identify and engage suitably technically qualified employees of the Jogipet RESCO in accordance with its needs. The employees of the Jogipet RESCO that are not engaged by CPDCL are to receive ex-gratia job loss compensation, similar to the Voluntary Retirement Scheme applicable to employees of the State Level Public Enterprises.

2. To safeguard power supply to consumers and to minimize the financial impact of winding up of the Jogipet RESCO on creditors, the business, assets and liabilities (including the REC loan guaranteed by the State Government of the Jogipet RESCO are to be transferred to CPDCL after independent valuation and at a price to be agreed between

the liquidator (with the prior approval of the Registrar) and CPDCL.

3. The winding up process does not involve a competitive sale of the assets, liabilities and business of the Jogipet RESCO as these are being acquired by CPDCL to ensure continued power supply to consumers after completion of the winding up process. No operator other than CPDCL would be willing to take over liabilities, which far exceed the value of assets. The assets transferred from the Jogipet RESCO to CPDCL, is insufficient to meet even its dues for power supplied by CPDCL let alone the capital invested or the loan granted. In addition, CPDCL is taking over all debts of the Jogipet RESCO and is treating the share capital of individual members as security deposit.

It may have to be noted that there are 88 regular employees, 34 casual workers on consolidated monthly pay and 44 casual workers on daily wage basis paid monthly, working in the Jogipet RESCO. The A.P. Transco, having considered the prevailing situation in similarly situated RESCOs, had made its recommendations and suggested certain modalities to be adopted for absorption of regular employees working in such RESCOs which have become sick. The criteria for making such recommendation was that such of the regular employees of the RESCOs having corresponding qualifications, as applicable in erstwhile APSEB at their respective time of entry into service, can be considered for the same post presently held by them and that those who are not having sufficient qualifications were proposed for consideration in lower cadre post based on their educational qualifications. That in terms of the said recommendations, CPDCL issued necessary orders for absorption of 88

regular employees of the Jogipet RESCO based on their educational qualifications. Accordingly, decision was taken to absorb the regular employees alone into service.

The non-regular employees mainly consisting of casual workers on consolidated monthly pay and casual workers on daily wage basis filed W.P. Nos.22290, 21607, 22241 of 2003 and 23551 of 2004, 855, 2393 and 10715 of 2005.

The prayer in the said writ petitions is more or less same. They are seeking a declaration to the effect that the action of CPDCL in not absorbing them into service as unreasonable and arbitrary. They sought for directions to absorb them into service of CPDCL, but strangely enough they have obtained directions from this Court, directing stay of all further proceedings pursuant to the order, dated 01-07-2003, issued by the Registrar of Co-operative Societies for winding up of the Jogipet RESCO. The interim orders obtained by them from this Court, run beyond the scope of the writ petition.

W.P. No.21076 of 2003 has been filed by the individuals claiming to be members of the Jogipet RESCO challenging winding up of the Jogipet RESCO by the Registrar of

Co-operative Societies.

W.P. No.21523 of 2005 has been filed as social action litigation and in public interest by the consumers of the electricity espousing the cause of the residents of 172 villages and 52 hamlets spread over seven Mandals in Medak District with regard to the deplorable state of affairs in respect of the supply of electricity to the said villages. The affidavit filed by them categorically narrates

and highlights as to how the Jogipet RESCO mismanaged its affairs resulting in no maintenance with regard to supply of electricity to the consumers. The affidavit discloses the problems faced by the villagers in seven Mandals on account of the inability of the Jogipet RESCO to release new connections and to maintain continuous supply of electricity. They have suffered on account of frequent breakdown in power supply and the inordinate long time taken in restoring the power supply. It is under those circumstances, they invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to issue Writ of Mandamus declaring the action of the respondents, more particularly, the Government of Andhra Pradesh and the CPDCL in failing to ensure the supply of electricity to the villagers and hamlets within the area of operation of the Jogipet RESCO and their failure to complete the winding up proceedings in respect of the Jogipet RESCO as being illegal, arbitrary and unconstitutional. They accordingly prayed for a consequential direction directing the respondents to forthwith take effective steps for ensuring the supply of electricity to the said Mandals on par with other areas of the State where the distribution is done through CPDCL. The sum and substance of their plea is that the respondents are required to forthwith takeover the responsibility and obligation of supply of electricity to the villagers and hamlets within the area of operation of the Jogipet RESCO.

We have elaborately and in detail heard the learned counsel appearing on behalf of the petitioners including

Sri D. Prakash Reddy, learned senior counsel appearing on behalf of non-regular employees, and also the learned Special Government Pleader as well as Sri M. Sreeramulu Reddy, learned counsel appearing on behalf of CPDCL.

Sri S. Niranjan Reddy, learned counsel appearing on behalf of the petitioners in the social action litigation, submitted that the misery and suffering for larger segment of people on account of ineffective and inefficient functioning of the Jogipet RESCO needs immediate and effective intervention of the State as well as the CPDCL to remedy the situation by providing electricity supply to the consumers in the similar manner, as is being done through out the State.

We have carefully considered the submissions. On such consideration, we find the following two points arise for our consideration in this batch of writ petitions:

1. *Whether the impugned order, dated 01-07-2003, passed by the Registrar of Co-operative Societies directing the Jogipet RESCO to be wound up suffers from any infirmity ?*

2. *Whether the non-regular employees are entitled to their absorption into the regular service of the CPDCL ?*

POINT No.1:

The enquiry report submitted by the enquiry officer and findings of the Registrar of Co-operative Societies on the enquiry report in clear and categorical terms reveal the precarious financial condition of the Jogipet RESCO.

The finding of the Registrar of Co-operative Society that the financial condition

of the Jogipet RESCO is beyond salvation and there is no alternative but to wind up the RESCO and transfer its assets and liabilities to CPDCL to whom large sums are due by it, in our considered opinion, is not vitiated. The findings are based on the material available on record that any further continuation of the RESCO would be detrimental to the public interest. The interest of the existing and future consumers would be in jeopardy, if the task of supply of electricity continues to be in the hands of the defunct and practically dead RESCO. The Registrar, undoubtedly, had kept the larger public interest parameters in view and passed the impugned order to wind up the RESCO only on consideration of such larger public interest. The liabilities of Rs.28.00 crores of the Jogipet RESCO at the end of March, 2003 far exceeds its assets. Any further delay in ordering winding up the Jogipet RESCO, in our considered opinion, would have added to the misery of consumers.

For dismal financial performance, the Jogipet RESCO has to blame itself and as well as for the ugly situation, in which, it is placed.

The essential conditions envisaged under Section 64 of the Societies Act have been scrupulously followed by the Registrar before directing the Jogipet RESCO to be wound up. The Registrar found that the Jogipet RESCO has conducted its affairs in the manner detrimental to the interests of its members as well as promotion of the object for which the RESCO has been registered under the provisions of the Societies Act.

The contention that the person-in-charge did not place the report of the enquiry officer along with the findings before the General Body convened for the said purpose, and therefore, no action could have been taken on the basis of the said report is totally misconceived and untenable.

The Registrar of the Co-operative Societies is not precluded from taking follow up action pursuant to the enquiry report, even in cases, where the General Body of the society passed a resolution negativating the findings of the enquiry. It may be the duty of the managing committee or the person-in-charge to place the enquiry report, but even in cases, where such report is not placed, the consequential action initiated by the Registrar cannot be nullified.

Sub-section (2) of Section 64 of the Societies Act, enables the Registrar to direct any Society to be wound up,

if in his opinion such society has conducted its affairs in a manner detrimental to the interests of its members or contrary to the object for which it has been registered.

The cumulative effect of the report and the findings of the Registrar, undoubtedly, reflect that the Jogipet RESCO has conducted its affairs not only in the manner detrimental to the interests of its members but also contrary to the object for which it has been registered.

In the circumstances, we find no merit in the contention. There was no option left to the Registrar but to direct winding up of the RESCO. We find no infirmity in the order passed by the Registrar of Co-operative Societies, which is in conformity with the provisions of the Societies Act and the Rules framed thereunder. The petitioners indulged in speculative litigation in challenging the impugned order for whatsoever reasons.

The Point No.1 is accordingly answered.

POINT No.2:

The non-regular employees consisting of casual workers on consolidated monthly pay and as well as casual workers on daily wage basis paid monthly cannot compare themselves with the regular employees. The Government of Andhra Pradesh vide G.O. Ms. No.125, Energy, (PR.II) Department, dated 15-10-2004, issued orders for absorption of the regular employees working in various RESCOs into CPDCL and
A.P. Southern Power Distribution Company Limited including 88 regular employees of the Jogipet RESCO. The scheme framed pursuant to the said G.O. for absorption, by creating supernumerary posts, in our considered opinion, is a
self-contained one, under which the non-regular employees cannot claim any benefit. The non-regular employees consisting of casual workers on consolidated monthly pay and daily wage basis, undoubtedly, constitute a separate class from other employees who were employed on regular basis in the RESCO. The contention that their non-absorption into service in the similar manner as that of the regular employees is violative of equality clause is ill founded.

Right to equality clause has no application and cannot be pressed into service in this case. Article 14 of the Constitution of India, in no manner mandates to treat unequals as equals. In the affidavit filed in support of
W.P. No.22290 of 2003, the petitioners, themselves, have admitted that they do not possess technical qualifications to hold any regular post. They, however, claim that they were performing the regular duties on par with the regular employees. Their performance of regular duties without possessing the required qualifications for being appointed into regular post is of no

consequence. They have no right to insist for absorption for regularization and for their appointment into the services of CPDCL.

The only question then remains to be considered is whether the services of the non-regular employees consisting of 34 casual workers on consolidated monthly pay and as well as 44 casual workers on daily wage basis paid monthly is required to be dispensed with on the ground that they are not the regular employees ?

In our considered opinion, it would be appropriate for CPDCL to consider as to whether any suitable scheme could be framed for utilizing the services of the non-regular employees working in the Jogipet RESCO, provided suitable work is available to be performed by them. After all, displacement of one set of non-regular employees by the other set of non-regular employees would not serve any public interest nor does it serve the purposes of the employer i.e., in this case, CPDCL.

In the circumstances, there shall be a direction directing CPDCL to consider the case of the non-regular employees of Jogipet RESCO for utilization of their services in the same manner as has been done by the RESCO, for which purposes, an appropriate decision shall be taken within a period of three (3) months from the date of receipt of a copy of the order. It shall be open to CPDCL to issue appropriate instructions and frame a scheme, as it may consider necessary for the purposes of utilizing the services of the non-regular employees. The petitioners are not entitled to any further relief.

The Point No.2 is accordingly answered.

In the result,

1) W.P. No.21076 of 2003 filed by the Jogipet RESCO challenging the order of its winding up shall stand dismissed without any order as to costs. The order passed by the Registrar of Co-operative Societies directing to wind up the Jogipet RESCO is accordingly upheld;

2) W.P. No.21523 of 2005 filed as social action litigation in purported public interest is disposed of directing respondents 1 to 3 to take effective steps to complete the winding up proceedings in respect of the Jogipet RESCO with further direction to take effective steps for ensuring the supply of electricity to the consumers in the area of its operation;

3) The A.P. State Electricity Regulation Commission shall forthwith take the necessary steps for revocation of the licenses and shall revoke the transmission licence initially granted to the Jogipet RESCO and grant licence to CPDCL enabling it to ensure supply of electricity to the existing and future consumers within the area of operation of the Jogipet RESCO. The A.P. State Regulation Commission shall accordingly stand impleaded as 7th respondent in W.P. No.21523 of 2005. There shall be an order accordingly. No order as to costs;

4) W.P. Nos.22290, 21607 and 22241 of 2003, 23551 of 2004, 855, 2393 and 10715 of 2005 are disposed of directing the respondents to consider the case of the non-regular employees consisting of 34 casual workers on

consolidated monthly pay and 44 casual workers on daily wage basis paid monthly, for utilization of their services in the same capacity provided sufficient and suitable work is available to be performed by them. They shall not be replaced by any other set of contract or contingent/casual employees.

Such replacement in no manner serves public interest or the interest of CPDCL. There shall be an order accordingly.

No order as to costs.

_____

B. SUDERSHAN REDDY, J

Date: 14th Nov., 2005.

_____

S. ANANDA REDDY, J

PV